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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	87440645
Applicant	Med-Aesthetic Solutions, Inc.
Applied for Mark	SALTFACIAL L'AVANTAGE
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Submission	Applicants Request for Remand and Amendment
Attachments	2019-01-06-NDG-87440645 SALTFACIAL Remand Motion.pdf(97921 bytes) 2019-01-06-NDG-Final-87440645 SALTFACIAL Response OA2.pdf(2561201 bytes)
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Signature	/ndg-pto/
Date	01/07/2019

TRADEMARK

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
TRADEMARK TRIAL AND APPEAL BOARD

In re ex parte appeal

Application of: Med-Aesthetic Solutions, Inc.

Application Serial No.: No. 87440645

Trademark: SALTFACIAL L'ADVANTAGE

Assistant Commissioner for Trademarks
P.O. Box 1451
Alexandria, VA 22414-1451

**APPLICANT'S MOTION TO REMAND TO THE EXAMINING ATTORNEY FOR
CONSIDERATION OF NEW EVIDENCE OR IN THE ALTERNATIVE FOR AN
EXTENSION OF THE TIME FOR SUBMITTING THE OPENING APPEAL BRIEF**

Applicant moves the Trademark Trial and Appeal Board to remand this application to the Examining Attorney for consideration of the request for reconsideration, amendment to the identification of goods, and additional evidence. Applicant submits that the request for reconsideration is not mere re-argument but presents substantially new information which Applicant believes will put the application in condition for publication.

In the unlikely event, the motion for remand is not granted, Applicant respectfully requests an additional sixty (60) days to prepare and file its opening appeal brief.

Respectfully submitted,

Dated: January 7, 2019

By: /s/ Neil D. Greenstein
Neil D. Greenstein
TECHMARK
1968 S. Coast Hwy., #1636
Laguna Beach, CA 92651
Telephone: (858) 779-9046

Attorney for Applicant

TRADEMARK

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
TRADEMARK EXAMINING OPERATION

In re the Application of:

Med-Aesthetic Solutions, Inc.

Examining Attorney

Application Serial No.: 87440645

Ryan Cianci

Filed: May 5, 2017

Law Office 116

Mark: SALTFACIAL L'ADVANTAGE

(571) 270-3721
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Assistant Commissioner for Trademarks
P.O. Box 1451
Alexandria, VA 22414-1451

Sir:

RESPONSE AND REQUEST FOR RECONSIDERATION

This request for reconsideration includes additional evidence, modifies the identification of goods, and is in response to the second office action.

AMENDMENT

Please further amend the identification of goods in this application to state:

Medical apparatus and instruments for abrading, peeling and resurfacing tissue, sold exclusively to licensed medical professionals; Medical apparatus, namely, light based devices for performing medical and aesthetic skin treatment procedures; phototherapeutic apparatus for medical purposes, namely, a LED (light emitting diode) light source for medical and aesthetic skin treatments, sold exclusively to licensed medical professionals; medical apparatus using ultrasound for performing medical and aesthetic skin treatment procedures, sold exclusively to licensed medical professionals.

REMARKS

Applicant requests reconsideration and responds to the Examining Attorney's new evidence in his final office action. Applicant submits that the evidence submitted in its co-pending application for SALTFACIAL [Serial No. 87439226] establishes that the term SALTFACIAL is **not** merely descriptive and thus, no disclaimer is required in this application. For the convenience of the Examining Attorney, Applicant submits herewith copies of the declarations of Richard Asarch (Exhibit A), Allan Danto (Exhibit B), and Jessica Relyea (Exhibit C) supporting the nature of the goods, the proper use of the goods, the relevant consuming public, and the relevant consumer perception.

A. The Proper Consumer to Determine Descriptiveness of SALTFACIAL is NOT a Hypothetical Illegal Purchaser But is the Lawful Consumer Identified in the Application

First, Applicant has clarified its identification of goods to indicate that the goods are only sold to licensed doctors and physicians. The Examining Attorney has argued that Applicant's relevant consuming audience is the general public. Applicant submits that it is improper for the Examining Attorney to suggest and argue that Applicant will sell its goods in violation of law (i.e., to non-medical professionals) and in a way that is contrary to that specified in the identification of goods. Indeed, the Examining Attorney should only be considering the goods as listed in the application and sold in accordance with the law rather than arguing that the goods can be sold in an illegal manner and that such illegal sales somehow make the mark merely descriptive as to those hypothetical illegal goods. Thus, the only proper audience is the audience permitted by the FDA and the federal government to purchase the goods – medical professionals.

While the Examining Attorney has taken the position that the relevant determination of

mere descriptiveness of SALTFACIAL is the general public, Applicant respectfully disagrees with that proposition. The universe of prospective purchasers is important for descriptiveness cases just like it is in a likelihood of confusion case. As the CAFC acknowledged in *In re Bayer Aktiengesellschaft*, 488 F.3d 960, 963-964 (Fed. Cir., 2007):

Descriptiveness of a mark is not considered in the abstract. Rather, it is considered in relation to the particular goods for which registration is sought, the context in which it is being used, **and the possible significance that the term would have to the average purchaser of the goods because of the manner of its use or intended use.** See *In re Abcor Dev. Corp.*, 588 F.2d 811, 813-14 (CCPA 1978); see also *In re MBNA Am. Bank N.A.*, 340 F.3d 1328, 1332 (Fed. Cir.2003). (emphasis added).

The CAFC continued by stating:

Evidence that a term **is merely descriptive to the relevant purchasing public** "may be obtained from any competent source, such as dictionaries, newspapers, or surveys. (Emphasis added)

Similarly, in *Astra Pharmaceutical Products, Inc. v. Beckman Instruments, Inc.*, 718 F.2d 1201, 220 USPQ 786 (1st Cir., 1983), the Court found that highly specialized medical professionals would distinguish between marks used in different medical areas. Specifically, the Court found significant differences (and did not find a likelihood of confusion) with the term ASTRA used with pharmaceutical preparations and syringes and ASTRA used on blood analyzing equipment. The issue was so clear cut that the District Court (with the First Circuit affirming) resolved the issue on summary judgment with the Court noting:

The most favorable inference that may be drawn from the evidence regarding the similarity of goods is that both parties' products are used in the medical or health care field. However, such a broad inference is not sufficient to demonstrate that a genuine issue exists concerning likelihood of confusion as to the source of the products involved in the present suit

* * * *

Perhaps the most critical factor that weighs against Astra in our consideration of this issue is the sophistication of the class of prospective purchasers of the subject products. If likelihood of confusion exists, it must be based on the confusion of some relevant person; i.e., a customer or purchaser. And there is always less likelihood of confusion where goods are expensive and purchased after careful consideration. Pignons, 657 F.2d at 489; Fisher Stoves, 626 F.2d at 194. [emphasis added]

Indeed, the Examining Attorney in his office action expressly recognized, but did not apply, this principle.

As evidenced by the declarations submitted herewith and the evidence in the record, the purchasers are highly sophisticated and understand the nature of the products in issue. Since the evidence is uncontroverted that the relevant consuming public/average purchasers – the highly sophisticated doctors and physicians who can legally purchase the products – understands that the goods are not to perform facials on the epidermal skin layer but are to perform complex procedures on deeper layers of skin. See, Asarch Declaration.

For these reasons, Applicant respectfully submits that the Examining Attorney’s conclusion of mere descriptiveness of the term SALTFACIAL is based on a faulty premise of an incorrect relevant consuming public. Thus, with the additional information set forth below and in the declarations submitted herewith, and the clarification of the identification of goods, Applicant submits that the requirement for a disclaimer must be withdrawn.

B. The Examining Attorney Misinterprets the Significance of the Significance of the Third Party Registrations.

HYDRAFACIAL has been registered without any disclaimer or Section 2(f) showing. Applicant submits not only were the prior registrations properly examined, decided, and issued by the USPTO, but that they show that “facial” is not perceived as merely descriptive in the marketplace. The Examining Attorney states that prior registrations are not “binding” on him.

However, the registrations are important in defining what is perceived in the marketplace. Clearly, the Examining Attorney should not be substituting his own personal beliefs for the evidence of what is perceived in the marketplace. Here, the consumer public – i.e., the highly sophisticated doctors and physicians – already recognize HYDRAFACIAL as a trademark and brand name for Medical apparatus and instruments for peeling and resurfacing tissue. Not only is the HYDRAFACIAL registration incontestible and conclusive evidence of validity, but the HYDRAFACIAL mark is in use in the marketplace. See, Exhibit D, showing use on the web in the marketplace.

Thus, these registrations are highly probative of the marketplace perception of terms containing “facial” for medical and non-medical apparatus. For this reason, Applicant submits that the existing registration should be given appropriate consideration.

C. The Examining Attorney’s Assertion that SALTFACIAL merely describes the function of Applicant’s Goods has been refuted in that Applicant’s Goods are not for performing “facials.”

As set forth in the attached declarations and as explained in the prior office action response, Applicant’s goods are not intended to be used for nor are they sold for performing “facials.” Thus, the SALTFACIAL portion of the mark does **not** “describe” a function of the goods. Indeed, since the goods are for use with very different procedures – e.g., microdermabrasion performed by and under the direction of doctors and physicians – the contrived, shortened term is “incongruous” and not merely descriptive.

Applicant has examined the exhibits proffered by the Examining Attorney. The Examining Attorney apparently misunderstands the what is performed in a facial and what is performed in other skin treatments. Indeed, if the Examining Attorney were to illegally purchase

the machine and misuse it to perform a facial there would be a grave risk of injuring the subject. The highly sophisticated nature of Applicant's device and risks of injury if used improperly are discussed in the Asarch declaration submitted herewith.

The Examining Attorney in arguing that the SALTFACIAL portion of the mark is merely descriptive necessarily blurs the meaning of words and procedures used in the relevant industry.

For example, the Examining Attorney goes to great lengths to define salt and that salt is used in one part of the device. But, Applicant has never denied that its device uses salt. Salt can season food, can change the temperature at which water boils, can change the buoyancy of water, can melt the snow off of roadways in the winter, and can be used in some medical procedures (even some skin care treatments). What is clear from the evidence submitted is that salt is not used in the SALTFACIAL L'ADVANTAGE goods to do facials! In attempting to equate facials with deeper sophisticated medical procedures, faulty assumptions have been made. The Office Action refers to "sea salt exfoliation" and equates that to a facial. But, exfoliation is not the equivalent of a facial. Again, by way of example, one can receive an IV as part of a medical procedure such as a colonoscopy and one can receive an IV as part of brain surgery to remove cancer. However, just because the person receives an IV does not mean that the two medical procedures are the same, related, or even performed by the same practitioner. After all, who would want a gastroenterologist performing brain surgery!

Indeed, even the Examining Attorney's quotation supports Applicant –

"The patented and unique delivery system is at the heart of the SaltFacial L'Avantage system, which **begins** with proprietary all natural, water soluble sea salt exfoliation." (Emphasis on "begins" added; other emphasis in original)

Just because a non-medical procedure and a highly sophisticated (and dangerous, if done wrong) medical procedure *begin* with exfoliation doesn't equate the two procedures particularly where the goods here are limited in sale, by law, (now) in the identification of goods in the application, and in fact, to licensed medical professions (doctors and physicians) who fully understand and appreciate the differences between non-medical facial treatments and medical skin treatments addressing deep layers of skin.

When one understands the differences in these medical and non-medical procedures it is clear that the use of the term "facial" as a portion of Applicant's mark is not merely descriptive, is incongruous, and immediately functions as a trademark.

E. Any Doubt Must Be Resolved in Applicant's Favor

In merely descriptive cases, the US PTO is required to resolve any doubts in favor of the Applicant for registration. *In re Remacle*, 66 USPQ2d 1222, 1224 (TTAB 2002).

Accordingly, Applicant respectfully submits that the requirement for a disclaimer should be withdrawn and the application should be passed to publication.

CONCLUSION

In view of the foregoing, Applicant submits that the term SALTFACIAL is *not* merely descriptive, that the Examining Attorney should withdraw his disclaimer requirement, and that this application should be passed to publication. Such action is respectfully solicited.

Respectfully submitted,

Dated: January 7, 2019

By: /s/ Neil D. Greenstein

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And

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Attorneys for Applicant, Med-Aesthetic
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EXHIBIT A

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

TRADEMARK EXAMINING OPERATION

In re the Application of:

Med-Aesthetic Solutions, Inc.

Examining Attorney

Application Serial No.:87440645

Ryan Ciani

Filed: May 5, 2017

Law Office 116

Mark: SALTFACIAL L'ADVANTAGE

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DECLARATION OF RICHARD G. ASARCH, M.D.

IN SUPPORT OF REGISTRATION

I, Richard G. Asarch, M.D. hereby declare:

1. I am a physician and specialize in Mohs Micrographic Surgery, Dermatologic Surgery, Cosmetic Dermatologic Surgery, Dermatology, Dermatopathology, Procedural Dermatology, and Dermatologic Research.
2. I am licensed to practice medicine in Colorado. I am Board Certified in Dermatology, and Board Certified in Dermatopathology. I was also elected into the American College of Mohs Surgery. I was honored by The Denver Magazine as being one of the Top Doctors in my field.
3. I am head of the Asarch Center for Dermatology, Laser & Mohs Surgery in Englewood, CO, and its accompanying state-of-the-art DermaSpa. I am an Associate Clinical Professor for the Department of Dermatology at the University of Colorado Health Sciences Center. I introduced Mohs Micrographic surgery, the procedure that has the highest cure rate for all skin cancers, to the State of Colorado in 1977 after I studied with Dr. Frederic Mohs in Madison, Wisconsin. In 1983, I was the first doctor in Colorado to incorporate laser treatments for skin issue correction.
4. I have practiced Dermatology, including evaluating and adopting the latest advances in the field for over 35 years. My experience and continued dedication to skin wellness led me to create a comprehensive line of skin care products to meet the needs of individual skin types. An innovator in skin health, I published my first book, "Turn Back Your Face Years" after studying the aging process of patients' skin over decades. My theories on how skin ages and how that process could be remedied include dietary aspects is addressed in my second book, "Beautiful Skin Diet" -recipes with ingredients that

promote healthier skin. Needless to say, I believe I am, and I am considered by my peers to be, a highly regarded medical expert on skin and skin treatments

5. I earned my undergraduate and medical school degrees at the University of Iowa. After I completed my internship at Good Samaritan Hospital in Oregon, I served as a General Medical Officer at McChord Air Force Base in Tacoma, Washington. I was a Research Fellow in the Department of Otolaryngology and Maxillofacial Surgery at the University of Iowa followed by a year of general surgery residency at the same institution. I regularly conduct and supervise various medical procedures of the skin, including, Mohs Surgery, Botox, Fractional Laser, Juvederm, Kybella, Ultherapy, Voluma, CORE (carbon dioxide laser surgery), Profound Radiofrequency, and Sublative Treatments. While I do not personally give facials, I am well familiar with facials, and indeed, one could get a facial at my companion spa. I am also familiar with the term “facial” as it is commonly used in esthetics, which relates to procedures treating the epidermal skin layer only on faces of patients.
6. I have extensive knowledge of microdermabrasion/exfoliation medical procedures. I, am of course, familiar with devices incorporating one or more of the modalities used in mechanical exfoliation, including, the SALTFACIAL system. Microdermabrasion is a medical procedure which is very different than “facials” such as those administered by estheticians. “Facials” are a beauty treatment addressing only the top layer of skin – the epidermal layer -- and is typically performed by estheticians and others who are not required to conduct procedures under medical supervision. People knowledgeable of skin and skin care treatments, such as physicians and estheticians, readily understand the huge difference between a microdermabrasion medical exfoliation procedure and a facial

beauty treatment. The microdermabrasion medical exfoliation procedure addresses much deeper layers of skin and can, if not done properly, cause bleeding and injury to a patient. These deeper layers of skin are not for novices to address. The FDA obviously recognizes the potential harm an improper medical mechanical exfoliation treatment could inflict on a person and requires that the SALTFACIAL device be sold only to licensed medical professionals. Quite simply, in my view, a non-medical person giving or receiving a microdermabrasion exfoliation treatment should never be allowed to choose or operate equipment designed for use in intense deep skin layer medical procedures, such as the SALTFACIAL device, without strict medical training and supervision.

7. I am also a consumer of Applicant's SALTFACIAL device and I have used, and supervised others in using, Applicant's SALTFACIAL device for several years. That device works superbly. Such a sophisticated medical device should not be used without strict medical supervision due to the dangers involved.
8. The nature of the SALTFACIAL device and its capabilities are immediately clear to one skilled in the field. I can't imagine a dermatologist handing over a SALTFACIAL medical exfoliation device to an unskilled, unsupervised person to do "facials." That would, in my view, be a recipe for disaster.
9. I understand from counsel that the trademark examiner has attempted to equate medical microdermabrasion exfoliation procedures with facials. The attempt to equate these procedures misunderstands the differences between these procedures. Moreover, the term "facial" should not be commonly used to refer to medical procedures as such term is commonly understood to refer to non-medical beauty procedures. I understand that the

examiner has also asserted that SALTFACIAL merely describes an “ingredient, quality, characteristic, function, feature or purpose” of the device. I am also informed that the examiner equates any exfoliation with facials. Exfoliation is used in a number of medical procedures and is not the equivalent of facial. Such a belief misunderstands medical procedures and skin renewal treatments. For example, injections can be given for a number of reasons – an injection can be used to administer Botox or an injection can be given as a start to anesthesia for brain surgery. But, that does not mean that Botox treatments are the equivalent of brain surgery.

10. Since Med-Aesthetic Solutions device is clearly designed for and have features for treatments that are NOT facials but rather address other skin layers, I do not see how Med-Aesthetic Solutions mark can merely describe something for which the device is not suitable. In my view the only way a person could reach such a conclusion is by having a faulty premise about either the functions, features, purposes, characteristics or qualities of the device or misunderstanding the meaning of the term “facial.” Quite simply, the term “facial” does not describe the medical procedures performed by physicians, or under direct supervision of physicians, with the assistance of the SALTFACIAL device.
11. The SALTFACIAL medical device allows licensed medical providers to administer ultrasound and LED photobiomodulation, in addition to medical exfoliation. These are also medical procedures involving potential risk to the patients and which are appropriately performed by or under the direction of licensed medical professionals, and are very different from “beauty treatments” like facials.
12. I have been trained in using the SALTFACIAL Skin Renewal Therapy Device in its various modes and I have reviewed its capabilities. My staff and I have use the

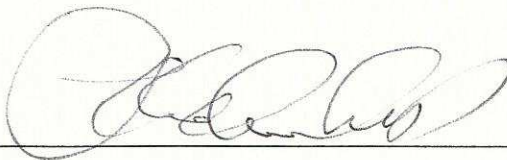
SALTFACIAL skin renewal therapy device for medical procedures on a large number of patients, such as for microdermabrasion, and treatment of stretch marked skin (which are not in the facial region of the body). While “facials” address only the “top” epidermal skin layer, the SALTFACIAL device is used to treat tissue beyond the epidermal layer. Again, these procedures must be done by, or under the direct supervision, of a licensed medical professional, and may not be performed by one providing beauty “facial” services addressing only the top layer of face skin. It is my experience that physicians, particularly those board certified in dermatology or the treatment of skin conditions, are sophisticated concerning the use of devices for medical procedures, such as the SALTFACIAL device, and would immediately know that this device is not one used for non-medical “beauty” procedures in a spa or salon to treat merely the outer layer of skin.

13. I understand that questions have arisen as to whether or not SALTFACIAL merely describes the Med-Aesthetic Solutions device rather than being a brand name for skin renewal medical devices. I have several comments on these questions.

- A. I am unaware of anyone, or any competitive device, using the name SALTFACIAL to identify the brand of its device other than Med-Aesthetic Solutions.
- B. I am unaware of anyone, or any competitive device, using the name SALTFACIAL to describe the features or characteristics of devices competitive to Med-Aesthetic Solutions SALTFACIAL device which addresses deeper layers of skin.

- C. I have never seen SALTFACIAL used in any medical literature to describe any ingredient, quality, feature or characteristic of medical devices used for skin renewal procedures.
- D. Even if the single word SALTFACIAL is broken into separate words, I do not consider the medical procedures performed with this device to be “facials” (as that term is commonly used for beauty treatments).
- E. The only times I recall seeing the coined term SALTFACIAL is when identifying the brand of Med-Aesthetic Solutions medical equipment.
- F. The single coined word SALTFACIAL doesn't have any specific meaning in the dermatology field but is a play on words. I believe that professionals in the industry do now understand and others would fully understand that SALTFACIAL doesn't have a specific meaning. Yet, after pausing, thinking, and having familiarity with Applicant's device such professionals would recognize the “cuteness” of Applicant's brand name.

I declare under penalty of perjury that, to the best of my knowledge and belief, the foregoing is true and correct. Executed in the United States on January 5, 2019.



Richard G. Asarch, M.D.

EXHIBIT B

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

In re Application of:

Med-Aesthetic Solutions, Inc.

Serial No. 87440645

Trademark: SALTFACIAL L'ADVANTAGE

Filed: 5 May 2017

Trademark Examining Attorney:

Ryan Ciani, Law Office 116
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DECLARATION OF ALLAN DANTO

I, Allan Danto, hereby declare under penalty of perjury under the laws of the United States of America that the following is true and correct.

1. I know the following facts to be true of my own personal knowledge. I am President and Chief Executive Officer of Med-Aesthetic Solutions, Inc. ("Med-Aesthetic"). Med-Aesthetic sells equipment and facilitating gels to licensed medical professionals. In fact, only licensed medical professionals are legally allowed to purchase Med-Aesthetic's SALTFACIAL equipment.

2. I have been involved in the aesthetic medical field since 2003. I am familiar with most aesthetic medical technologies and skin care products currently available, including those offered to consumers for good dermal health by medical aesthetic facilities. I am also familiar with the different terms used in the industry, such as symptomatic treatments and therapeutic treatments, as discussed further below.

3. As set forth in U.S. Trademark Application Serial No. 87439226, Med-Aesthetic is the owner of the mark SALTFACIAL for (as amended with the filing of this declaration):

Medical apparatus and instruments for abrading, peeling and resurfacing tissue, sold exclusively to licensed medical professionals; Medical apparatus, namely, light based devices for performing medical and aesthetic skin treatment procedures; phototherapeutic apparatus for medical purposes, namely, a LED (light emitting diode) light source for medical and aesthetic skin treatments, sold exclusively to licensed medical professionals; medical apparatus using ultrasound for performing medical and aesthetic skin treatment procedures, sold exclusively to licensed medical professionals.

Med-Aesthetic has been selling these goods to licensed medical professionals since

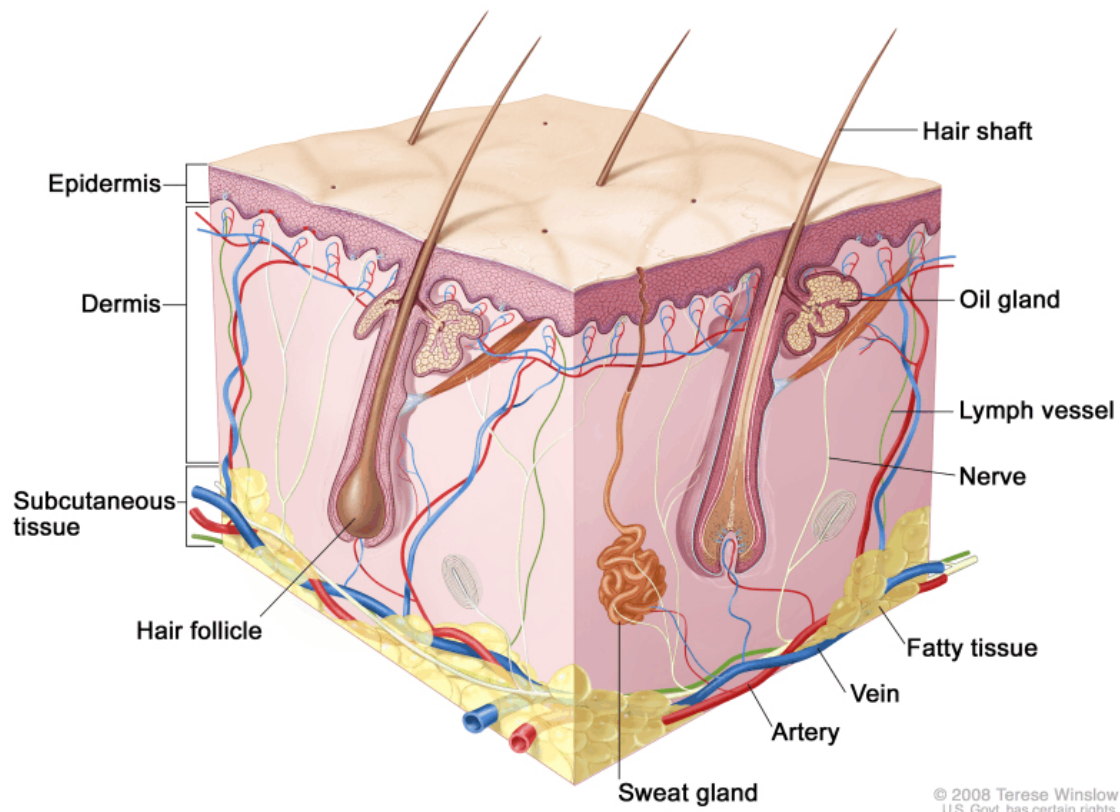
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4. To understand how the SALTFACIAL goods are used, and why only licensed medical professionals may purchase those goods, one must understand the nature of the medical market. For example, some drugs treat the symptoms of a disease or malady. Aspirin and ibuprofen are pain-killers/analgesics, they treat a symptom or pain. Tetracycline and penicillin are therapeutic drugs, they treat the underlying problem (infection) that may be causing the pain.

5. As is true for many medical situations, there are various treatments used on the skin. As with drugs, some of those treatments are symptomatic, that is, they treat symptoms (e.g., dandruff, dry skin, etc.). Other treatments are therapeutic, that is, they treat the underlying problem. In this regard, facials address only the epidermis layer of skin and are a symptomatic treatment; at best, a facial treats the symptoms. Often, a facial, being a symptomatic treatment, merely makes the person feel better for a brief period of time.

6. In contrast, the goods represented by the SALTFACIAL mark are designed to be used for therapeutic treatments. That is, instead of just treating symptoms, the SALTFACIAL goods are used by licensed medical professionals to treat underlying problems with the skin. Another way to understand this difference is to consider what layer of skin is treated. As indicated above, a facial treats only the top layer of skin, that is, the epidermis. By contrast, the SALTFACIAL goods are used to treat the dermal layer of skin, that is, the dermis. The difference can be seen in the following image, downloaded from

<https://www.ncbi.nlm.nih.gov/pubmedhealth/PMHT0022671/?figure=1>



7. As shown in the image above, the dermis layer is below the epidermis. A facial treats the epidermis, the top layer of skin. As a result, most facial treatments are applied to consumers by persons who are not medical professionals, such as licensed

aestheticians or cosmetologists, without medical supervision. Treating the dermis layer, however, requires the supervision of a state-licensed medical.

8. As recited in the amended identification of goods for this application, Med-Aesthetic's goods are used "for abrading, peeling and resurfacing tissue"; for "light based devices for performing medical and aesthetic skin treatment procedures"; for "phototherapeutic apparatus for medical purposes"; and for "medical apparatus using ultrasound"; all of which are sold exclusively to licensed medical professionals. These products are not legally saleable to spas or ordinary consumers. In fact, the only place an ordinary consumer is likely to see the SALTFACIAL mark (unless they read specific types of medical publications, where the goods may be advertised to medical professionals) is on a SALTFACIAL device which may be next to the consumer when the consumer is sitting in a chair receiving therapeutic treatment. Thus, the intended consumer for Med-Aesthetic's goods distributed under the SALTFACIAL mark is a highly sophisticated medical professional doing therapeutic that is, dermal-layer, skin treatments.

9. In addition to equipment, Med-Aesthetic also sells gels to be used with the dermal layer treatments performed by that equipment. Labels for those goods are reproduced below:

<i>Gliding Gel</i>	<i>Professional Sample</i>
 <p style="font-size: 24px; margin: 0;">The Salt Facial™</p> <p style="color: #00a08a; font-size: 12px; margin: 0;">Skin Renewal Therapy</p>	<p>DIRECTIONS: Apply a thin layer to treatment area, as a coupling agent for ultrasound.</p> <p>INGREDIENTS: Water, Glycerin, Polysorbate 20, Glyceryl Acrylate/Acrylic Acid Copolymer, Carbomer, Citrus Limon (Lemon) Leaf Cell Extract, Swertia Chirata Leaf Extract, Lecithin, Isopropyl Palmitate, Aminomethyl Propanol, Phenoxyethanol, Ethylhexylglycerin</p> <p style="text-align: right; font-size: 10px;"> Manufactured for: Med-Aesthetic Solutions, Inc. Cardiff, CA 92007 www.thesaltfacial.com Expiration date: Jan. 2020 Size: 4 FL OZ (118 mL) </p>

<i>DermMasque Mandelic</i>	<i>Professional Sample</i>
 <p style="font-size: 24px; margin: 0;">The Salt Facial™</p> <p style="color: #00a08a; font-size: 12px; margin: 0;">Skin Renewal Therapy</p>	<p>DIRECTIONS: Apply a thin layer (1/2 – 1 tsp) to the treatment area, avoiding eye area.</p> <p>INGREDIENTS: Water, Mandelic Acid, C12-15 Alkyl Benzoate, Dimethicone, Isostearyl Isostearate, Propylene Glycol, Tetrahexyldecyl Ascorbate, Lactic Acid, Polyhydroxystearic Acid, Fragrance, Glyceryl Stearate, PEG-100 Stearate, Retinyl Palmitate, Magnesium Aluminum Silicate, Superoxide Dismutase, Zea Mays (Corn) Oil, Vegetable Oil, Isostearic Acid, Tocopheryl Acetate, Tocopherol, Panthenol, Xanthan Gum, Disodium EDTA, BHT, Quartz, Phenoxyethanol, Ethylhexylglycerin</p> <p>SUNBURN ALERT: Use sunscreen and limit sun exposure when using this product.</p> <p style="text-align: right; font-size: 10px;"> Manufactured for: Med-Aesthetic Solutions, Inc. Cardiff, CA 92007 www.thesaltfacial.com Expiration date: Jan. 2020 Size: 4 FL OZ (118 mL) </p>



As can be seen, the ingredients of the respective gels are listed on those labels. Those ingredients are:

Water, Glycerin, Polysorbate 20, Glyceryl Acrylate/Acrylic Acid Copolymer, Carbomer, Citrus Lemon (Lemon) Leaf Cell Extract, Swertia Chirata Leaf Extract, Lecithin, Isopropyl Palmitate, Aminomethyl Propanol, Phenoxyethanol, Ethylhexylglycerin

Water, Mandelic Acid, C12-15 Alkyl Benzoate, Dimethicone, Isostearyl Isostearate, Propylene Glycol, Tetrahexyldecyl Ascorbate, Lactic Acid, Polyhydroxystearic Acid, Fragrance, Glyceryl Stearate, PEG-100 Stearate, Retinyl Palmitate, Magnesium Aluminum Silicate, Superoxide Dismutase, Zea Mays (Corn) Oil, Vegetable Oil, Isostearic Acid, Tocopheryl Acetate, Tocopherol, Panthenol, Xanthan Gum, Disodium EDTA, BHT, Quartz, Phenoxyethanol, Ethylhexylglycerin

Water, Glycolic Acid, C12-15 Alkyl Benzoate, Dimethicone, Isostearyl Isostearate, Propylene Glycol, Tetrahexyldecyl Ascorbate, Lactic Acid, Polyhydroxystearic Acid, Fragrance, Sodium Hydroxide, Glyceryl Stearate, PEG-100 Stearate, Retinyl Palmitate, Magnesium Aluminum Silicate, Superoxide Dismutase, Zea Mays (Corn) Oil, Vegetable Oil, Isostearic Acid, Tocopheryl Acetate, Tocopherol, Panthenol, Xanthan Gum, Disodium EDTA, BHT, Quartz, Phenoxyethanol, Ethylhexylglycerin

The definition of salt understood by ordinary consumers (sodium chloride, sometimes potassium chloride or other simple salts) would not include any of these ingredients. Hence, to describe these gels as salts, or even any of the ingredients of the gels as salts, and thus use of such gels on the face as a salt facial, would not be appropriate.

10. Furthermore, as mentioned above, a facial is a topical treatment, a treatment applied to the epidermis of the skin, which involves a number of steps. As a result, a facial is not therapeutic, but merely a symptomatic treatment.

11. There is a concept of salt exfoliation of the epidermis layer. After exfoliation, a number of procedures can be employed. While exfoliation itself is not a facial, exfoliation is one step that can be done during an epidermis facial in a spa or beauty salon. The SALTFACIAL device is not designed for facials but can do an exfoliation as part of a more involved medical procedure done by licensed medical professionals.

12. The device is not named a “Salt Exfoliator” but SALTFACIAL. The SALTFACIAL device purchased and used exclusively by licensed medical professionals, performs therapeutic skin rejuvenation procedures on the dermis skin layer in comparison to facials which are symptomatic procedures performed on the epidermis skin layer. Licensed medical professionals are well aware of these differences in the skin layers and in medical and non-medical procedures performed on skin layers. Thus, the term “facial” is not descriptive of the therapeutic treatments on the dermal layer for which Med-Aesthetic’s goods are used.

13. Because of the legal licensing requirements, Med-Aesthetic’s SALTFACIAL goods may only legally be distributed to licensed medical professionals.

As a result of the legal requirement to only sell to licensed medical professionals, Med-Aesthetic's SALTFACIAL goods will be understood by these medical professionals to be tied to the therapeutic procedures for which those goods are intended. Medical professionals will not be confused into believing that Med-Aesthetic's goods relate to some epidermis facial done with some type of salt. Med-Aesthetic's SALTFACIAL mark is not a term that describes an epidermis facial, the function or purpose of Applicant's products or the medical services performed with such equipment, and thus is not descriptive of anything.

14. The Examining Attorney apparently believes that "because the applicant's goods do not feature lasers or intense pulse lights" the products do not qualify as restricted sale to licensed medical professionals. However, the FDA disagrees with the Examining Attorney's belief and indeed Applicant is prohibited from selling its devices to non-licensed medical professionals.

15. Finally, I understand that the examining attorney has explained that decisions made about the registrability of one mark are not necessarily relevant to another mark. However, I wish to express my confusion at clearly conflicting interpretations. Trademark Registration Nos. 4317059 & 3341027 are for the marks: HYDRAFACIAL, and HYDRAFACIAL MD, used in connection with goods and services for facials performed on the epidermis layer of skin (i.e., the industry definition of a "facial"). Neither mark was refused registration for being descriptive, despite the fact that those goods and services specifically require water being applied to the face. Here, my SALTFACIAL mark is not used for equipment for facials (at most, it is used for exfoliation as part of a procedure executed by licensed medical professionals). If the

HYDRAFACIAL marks used for facials on the epidermis skin layer are not descriptive, it is perplexing to see how the SALTFACIAL mark, which requires several steps to understand a claimed reference medical procedures, on the dermal (not epidermal) skin layer (which is not considered a facial in the industry) is descriptive.

Dated: September 28, 2018



Allan Danto

EXHIBIT C

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

In re Application of:

Med-Aesthetic Solutions, Inc.

Serial No. 87440645

Trademark: SALTFACIAL L'ADVANTAGE

Filed: 5 May 2017

Trademark Examining Attorney:

Ryan Ciani, Law Office 116
(571) 270-3721
ryan.ciani@uspto.gov

DECLARATION OF JESSICA RELYEA

I, Jessica Relyea, hereby declare under penalty of perjury under the laws of the United States of America that the following is true and correct.

1. I know the following facts to be true of my own personal knowledge, and if called to testify, I could and would testify as follows.

2. I have been involved in the aesthetics industry for more than eleven (11) years, and specifically in the skin care business for more than six (6) years. I managed a Paul Mitchell Salon for five (5) years, and then ran the Eva Scrivo Salon and Spa, a spa facility in New York. I ran that particular business for five (5) years. The spa offered various services, including facials and other symptomatic treatments, and is in a city where people are very conscious of their aesthetic “looks.”

3. The spa did not offer therapeutic treatments, such as services utilizing the SALT FACIAL devices and gels as those machines, under FDA requirements, may only be purchased and used by licensed medical professionals. We were not able to offer such services because we did not have licensed medical professionals at the spa.

4. The market for therapeutic treatments from licensed medical professionals is very different from superficial symptomatic treatments such as facials. Facials are a very temporary procedure, often given by non-medical professionals, and address only the top layer of skin called the epidermis.

5. Despite years of experience running a New York spa, and more time and experience in the skin treatment business, I had never heard of anything called a “salt facial.” In fact, I don’t know what it means to do a salt facial. There is a concept of salt exfoliation but exfoliation itself is different from and is not a facial.

6. Since the SALTFACIAL device can't be sold to unlicensed medical professionals who typically perform superficial, and temporary, facials it is no surprise that I was unaware of the details of the SALTFACIAL device while running the New York spa.

7. I have now focused my work on Med-Aesthetic's SALTFACIAL device offered in the marketplace. This device does not perform a "facial" as that term is understood in the marketplace. Indeed, use of Med-Aesthetic's SALTFACIAL device, such as to therapeutically remove stretch marks after pregnancy or to therapeutically remove scar tissue, must be performed by or under the direction of licensed medical professionals as set forth in FDA guidelines.

8. As part of my work, I currently train people about the SALTFACIAL device. In connection with the SALTFACIAL device, I work with Plastic Surgeons (physicians), Dermatologists (physicians), and Medical Spas which have Medical Directors. The Medical Directors are trained medical professionals and are typically physicians.

9. I understand that the examining attorney argued that the general public is the proper purchasing audience for the SALTFACIAL machine. I don't understand that as I couldn't even purchase the SALTFACIAL machine for the spa in New York due to a lack of medically licensed professionals. If a professional spa doing routine facials can't purchase the SALTFACIAL device, it doesn't make sense to me to suggest that a consumer could purchase such a device.

10. In my experience when a customer comes to a spa, she/he does not typically request that a particular brand of machine be used for part or all of a treatment. The customer is more interested in the expertise of the technician who will perform the

treatment and leaves it to the technician to decide which machine will be used for various treatments.

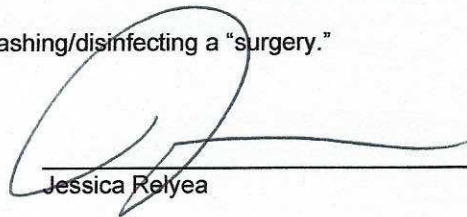
11. I have never had a person ask for a “salt facial” treatment. Indeed, if someone had asked for such a treatment, I would not know what she/he would be asking us to do and a further detailed explanation would have been necessary.

12. I understand that the examining attorney has argued that anything that has the potential to assist in beautifying the face is a “facial.” This misunderstands the meaning of facial in the industry. Indeed, under the examining attorney’s definition, Vaseline Intensive Care lotion, which is marketed as “proven to deeply moisturize dry, cracked skin keeping dry skin healed for three weeks” is a “facial.” Similarly, the examining attorney’s non-industry definition of facial would include surgical facelifts and Botox treatments. But, in my experience, the relevant industry – including the medical professionals who are the potential purchasers of Applicant’s device – does not consider those medical treatments to be facials.

13. Finally, I understand that the examining attorney is confusing “exfoliation” with facial. Exfoliation is a procedure which can be part of, but certainly not completely, a facial. However, exfoliation is also a preparation step of various medical procedures which must be performed by licensed medical professionals. For example, washing/disinfecting an area of skin is a step in drawing blood. Similarly,

washing/disinfecting is used prior to surgery. When an area is washed/disinfected for a blood draw, that does not make the act of washing/disinfecting a "surgery."

Dated: September 6, 2018



Jessica Relyea

EXHIBIT D

THE TREATMENT

RESULTS

PRESS

hydrafacial

FAQ

ABOUT US

CAREERS

FIND A PROVIDER

TAKE YOUR GLOW TO GO — INTRODUCING ESSENTIALS

LEADN MODE

3 STEPS. 30 MINUTES.

THE BEST
SKIN OF
YOUR LIFE.

NOTHING COMPARES

Only HydraFacial uses patented technology to cleanse, extract, and hydrate. HydraFacial super serums are made with nourishing ingredients that create an instantly gratifying glow.

LEARN MORE

ENJOY THE
EXPERIENCE.

DELIGHT IN
THE
RESULT.

HOW IT WORKS

CLEANSE + PEEL

Uncover a new layer of skin with gentle exfoliation and relaxing resurfacing.

EXTRACT + HYDRATE

Remove debris from pores with painless suction. Nourish with intense moisturizers that quench skin.

HAVE A SPECIFIC SKIN CONCERN?

HydraFacial has you covered with bonus boosters.

GET A BOOST

TESTIMONIALS

What I've noticed more than anything after a HydraFacial treatment is how

My lines have decreased and the red splotches have almost gone away.

I noticed a difference in my skin after my first visit.

youthful and radiant
my skin is.

-Julie N., Colorado

The entire texture and
feel looks so healthy.

-Layla C.,
California

-Carole C., North
Carolina

IN THE PRESS



BAZAAR

allure



Forbes

POPSUGAR.

VOGUE

Reader's
Digest



InStyle

BRIT+CO

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HYDRAFACIAL IN THE EEA

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